Supreme Court, U.S.
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IN THE

Supreme Court of the United States

LYNIS M. ANDERSON,

Petitioner,

v.

SHIMELLA "STAR" ABODEEN, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI

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January 17, 2007

QUESTION PRESENTED

Whether the Supreme Court of New York, Appellate Division, First Department erred in concluding that, in order for Anderson to have a claim for sexual harassment hostile environment, Anderson would had to establish that Desportes display of nude photographs of Anderson to Anderson's co-workers was motivated by an animus against men.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing in the proceeding.

Petitioner and *pro se* is Lynis M. Anderson. He was the plaintiff in the Supreme Court Of The State Of New York and the appellant in the Supreme Court Of New York, Appellate Division, First Department.

Respondents are Louis Desportes and Allied Security. They were the defendants in the Supreme Court Of The State Of New York and the defendants-respondents in the Supreme Court Of New York, Appellate Division, First Department.

This case is caption as Anderson v. Abodeen. Shimella Abodeen was unable to be served with the Summons and Complaint in the Supreme Court Of The State Of New York. Abodeen is not and have not been part of these proceedings in the court of first instance, or the Supreme Court Of New York, Appellate Division, First Department.

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The opinion of the Supreme Court Of New York Appellate Division, First Department is unreported and reproduced in the Appendix at 1a – 2a. The decision of the Supreme Court Of The State Of New York is unreported and reproduced in the Appendix at 3a –12a.

JURISDICTION

The State Of New York, Court Of Appeals (New York's highest Court) denying review was entered on October 19, 2006. The decision is reproduced in the Appendix at 13a.

STATUTES INVOLVED

The statutes involved are the New York Human Rights Law §296(1)(a) and Title VII of the Civil Rights Act of 1964 specifically, (42 U.S.C. §2000E-2(a)(1), both involving, prohibition against sex discrimination.

STATEMENT OF THE CASE

This is one of the most important cases of sex discrimination to ever reach this court. This case is of great significance because it is about same-sex sexual harassment hostile environment in the workplace.

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In the CPA Journal, it discusses some of the legal remedies under New York State law, for "Victims of Sexual Harassment", which are similar to the relief under Title VII, and in some ways, more expansive than under federal law.

This case is utterly important because, the resolution of this case will affect employees and employers (of the same-sex) in every city, state, and throughout this country who faces similar circumstances of same-sex sexual harassment hostile environment. One of the most important reasons that Title VII of the Civil Rights Act of 1964 was enacted, was to prevent the very essential problem that is place before you. Individual states, such as here, the State of New York have also created laws identical to Title VII's, prohibiting sex discrimination. *Sardinia v. Dellwood Foods, Inc.*, 1995 WL 640502 (S.D.N.Y. 1995) and *§296(1)(a) of the New York Human Rights Law* that states "It shall be an unlawful discriminatory practice: (a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex.....to discriminate against such individual.....in terms, conditions or privileges of employment."

A male supervisor who clearly and intentionally discloses nude photographs of a male employee to other male employees; resulting with the male employee to suffer severe emotional and psychological injuries and having to abruptly resign from his place of employment, and seek immediate medical treatment to treat the injuries he sustained, has to be held accountable for his actions. The supervisor's superiors (whom are all men) who were well informed and aware of the incident, and does not reprimand nor discipline that supervisor's reprehensible conduct, but rather condone and approve such shocking and severely humiliating behavior, clearly shows that the male employee was discriminated on because of his sex.

The Appellate Division, First Department refusal to hold the respondents Louis Desportes and Allied Security accountable, despite the production of overwhelming hard

evidence by the petitioner Lynis M. Anderson, is a decision that greatly requires review and rectifying from this court. Unless respondents and those like them can be held accountable; corporations, employers and supervisors across this country will continue to intentionally violate Title VII and state laws that prohibits same-sex discrimination, by approving and condoning the inappropriate workplace behavior of a same-sex employee against another same-sex employee.

A. Factual Background

The security supervisor respondent Louis Desportes disclosed 2 nude photographs of the petitioner Lynis Anderson to three of Anderson's male co-workers in his office located at Deutsche Bank, in New York City. The entire Allied Security staff at Deutsche Bank was all men. The first photograph disclosed of Anderson is semi-nude, exposing Anderson's upper physique. Everything below Anderson's waist is clothed; everything above Anderson's waist is unclothed and exposed. The second photograph is of extreme sexually graphic content, showing Anderson completely and fully nude sitting in a chair holding his penis in his hand. Desportes received the photographs by e-mail from a Shimella Abodeen (*discussed below*). Desportes printed the photographs out, and intentionally disclosed them to male members of his staff.

Every male co-worker (except one), whom Desportes disclosed the nude photographs of Anderson to, gave deposition and affidavit testimony that they did not understand why Louis Desportes would disclose such shocking and personal material to them. The third male employee, in his deposition testimony, denied he viewed the pictures, even though, the two other male employees affirmed that he to

was shown the nude pictures of Anderson. In addition, Louis Desportes gave deposition testimony that he disclosed the photographs to all three male employees, including the third male employee who denied he viewed the pictures. All of these facts are contained in the record, located at the Appellate Division, First Department.

Upon Anderson learning of Louis Desportes possession and disclosure of the nude photographs of him, Anderson immediately contacted and filed a complaint with his department of Human Resources, located in Lyndhurst, New Jersey (a state away from the location of the incident). One of the male employee's who viewed the pictures, Edgar Maldonado (the key witness responsible for bringing this matter to the attention of Anderson), also filed a complaint with the department of human resources. Anderson subsequently sent copies of his complaint to three of Louis Desportes immediate superiors (all men), including the President and CEO of the company, which an employee is granted the right to do in the Security Handbook. Anderson complaint was investigated by Tracie Vincent from human resources, and ultimately dismiss. In Tracie Vincent's report she stated that Louis Desportes acted in good faith with the disclosure of the pictures to members of staff, and stated that if Anderson is "uncomfortable" to work as his current assignment, then she is willing to find Anderson an assignment elsewhere. It appears here that Tracy Vincent's assessment of the incident was as if, Anderson created and caused the incident himself. Louis Desportes never establish any justifiable reasoning for his disclosure of the nude photographs of Anderson to male members of his staff.

Upon Tracie Vincent informing Anderson of her findings, Anderson was continually shocked, outrage, and humiliated all over again which resulted with Anderson

having to abruptly resign from his place of employment and immediately seek professional medical treatment to treat the emotional and psychological injuries he sustained. Anderson had to see two doctors, a Psychotherapists and Psychopharmacologists. Anderson was diagnosed with Major Depressive Disorder (DSM IVR 296.22). Anderson was placed on (3) three kinds of anti-depressant medications consisting of, Wellbutrin, Bupropion and Zoloft, expanding over a year and three months. Anderson testified to all these facts in his deposition, and provided hard evidence in support of each fact, contained in the record.

Louis Desportes argument for disclosing the nude photographs of Anderson to all three male employees was because during the time of the incident, Anderson was being investigated for possible *allege* work place misconduct. Desportes stated that Anderson was being investigated for allegations made by a Shimella Abodeen. Abodeen was originally listed as a defendant in this case, but was unable to be served in the court of first instance. Anderson was never informed or aware of Abodeen's allegations against him or Louis Desportes investigation on him. Two male employees gave deposition and affidavit testimony that Louis Desportes did not inform them of any investigation on Anderson, or as to why Desportes is disclosing nude photographs of Anderson to them.

Abodeen, who is not an employee or affiliate of Allied Security or Deutsche Bank, contacted Anderson's place of employment and *falsely* stated that Anderson was committing *allege* workplace misconduct to her. Abodeen was a personal affiliate of Anderson.

Abodeen's allegations consisted of Anderson allegedly sending Abodeen nude pictures of himself (*the photos refe-*

rence above) from Deutsche Bank computers, and allegedly calling her repeatedly and harassing her from Deutsche Bank. The security supervisor Louis Desportes immediately investigated Abodeen's allegations. The result of Desportes investigation was that, Desportes "found his investigation to be inconclusive and closed the matter". For the greater part, most, if not all of Abodeen's allegations were untrue or could not be substantiated. Upon Anderson learning of the entire incident, he immediately filed a complaint with his department of human resources and with three of Desportes superiors (*as discussed above*) including the President and CEO of the company. Anderson adamantly stated in his complaint that Abodeen's allegations were completely false. In his complaint Anderson was very specific in detail, in regards to Abodeen and Anderson's short relationship. Abodeen's deposition was originally schedule to be taken by the respondents, affording Anderson the opportunity to depose Abodeen on cross-examine. The respondents decided not to take Abodeen's deposition, resulting with Anderson unable to depose Abodeen on cross-examine. All these fact are contained in the record.

At the time of the incident, Anderson was into the modeling business. Anderson met Abodeen on the Internet, where he discovered that she to claim she was into the modeling business as well. They both exchange modeling experiences, as well as, each other phone numbers and e-mail addresses. Anderson shared with Abodeen among others modeling opportunities, the interest of the nationally known adult magazine Playgirl, wanting Anderson to model completely nude in the magazine. Anderson had declined the offer from Playgirl magazine, and has never pose completely nude or partially nude (from the waist down) in any magazine or entertainment venue.

Anderson explained to Abodeen that he originally submitted a semi-nude picture of himself to Playgirl with only his upper muscular physique displayed, but Playgirl had no interests in that particular photo. However, Playgirl did have interests in Anderson physique and wanted him to pose fully nude in their magazine. Anderson did ask his girlfriend to take a full nude picture of himself, for the possible consideration for entry into the magazine. After Anderson thought it over, along with his moral beliefs, he declined their offer and there was never no submission of any full nude picture of Anderson to the magazine. Anderson does have the actual letter of employment from Playgirl accompany with the "uncompleted and unsigned" agreement still in his possession, and is contained in the record. Abodeen later requested to view both the semi-nude and full nude picture of him. Anderson felt comfortable with there relationship, being of modeling business related, and later sent the photographs from his home computer to the e-mail address provided by Shimella Abodeen. When their relationship taken a turn for the worst, Abodeen contacted Anderson's job, and created false allegations of inappropriate workplace misconduct.

The respondent Louis Desportes had taken these photographs, and for no justifiable reasoning disclosed them to three other male employees at Deutsche Bank. Desportes actions were reported to the department of human resources, and to three of Desportes immediate superiors, which were all men. All Desportes superiors received a certified copy with return receipt of Anderson's complaint to human resources. Desportes argument for his disclosure of the photographs to all three male employees was because they were "enlisted" in his investigation on Anderson.

With respect to Desportes argument, two out of the

three witnesses gave deposition and affidavit testimony that they were never informed or enlisted in any investigation on Anderson, when Desportes disclosed the nude photographs to them. The third witness gave deposition testimony that he *heard* Desportes say this has to be investigated; yet Desportes gave deposition testimony that he clearly and directly informed each witness as to the reason why he is disclosing the nude photographs of Anderson to them, as well as, the role that each one would have to adhere by. As it appear, their exists crucial conflicting testimony from Desportes and the witnesses as to Desportes reasoning to the disclosure of the photographs to them. Also, even if it was true that, Desportes did enlist the help of all three male staff members in his investigation, what relevance would the pictures have in regards for other male staff members to view such sexually graphic material of a male co-worker, in order for them to do there job effectively with assisting Desportes in his investigation on Anderson. It is important to note that, there was no evidence proffered by the respondents that would indicate that, Anderson brought the pictures to his job, sent the pictures from Deutsche Bank computers, solicit the attention at work, pose provocative at work, make gestures or request sexual encounters at work.

Anderson utilized every appropriate channel prescribed in the Allied Security handbook, to afford Allied Security the opportunity to provide some degree of remedial intervention to this matter. Allied Security corrective measure was to have the key witness who brought the entire incident to Anderson's attention, Edgar Maldonado terminated; the other two witnesses written up with disciplinary notices; and offered Anderson an employment relocation.

B. Proceedings Below

Petitioner – Lynis M. Anderson sued seeking to recover damages for the emotional and psychological injuries he sustained and loss of employment wages, resulting from the respondent Louis Desportes disclosing nude photographs of Anderson to Anderson's male co-workers, and Allied Security for not reprimanding Desportes nor providing any form of effective remedial intervention. Anderson claimed intentional infliction of emotional distress, defamation of character, and sexual harassment hostile environment.

In Anderson's amended complaint, he specifically pleaded sufficient facts to show that his sexual harassment hostile environment claim is indeed of the "same-sex", even though the words "same-sex" are not specified in his amended complaint as in "same-sex sexual harassment hostile environment." Throughout Anderson's amended complaint, the respondent Louis Desportes is addressed (11) eleven times as "Mr. Desportes"; the nude pictures disclosed were emphasize that they were disclosed by Desportes to Anderson's male co-workers; and Anderson makes a reference to the semi-nude picture which he states that, "the semi-nude photo was a replica of a Calvin Klein male model picture I use for my auditions to do print work." Last but not least, the photographs themselves clearly illustrates that the petitioner is of male gender. The total sum of facts and hard evidence clearly and strongly shows that this is indeed a case of same-sex sexual harassment hostile environment, rather than a case of "opposite sex" when written as sexual harassment hostile environment. Anderson's amended complaint clearly pleaded all these facts where a fact-finder would have been able to determine that this case is of same-sex sexual harassment hostile environment.

Anderson initially filed a claim with the New York City Commission on Human Rights prior to the lawsuit. A couple of months later, upon Anderson following up with the Commission, he was informed that the attorney who had initially taken Anderson's information, had resigned and his paper work was unfortunately lost. Anderson was advised that he could open up a new claim with the Commission. Anderson exercised his right under Sec.297 of the New York State Human Rights Law, and brought his claim directly into state court, without first having to file a charge with any administrative agency.

In compliance with Supreme Court of the United States Rule14 (1)(g)(i), the court of first instance was the Supreme Court Of The State Of New York, County Of New York. The Supreme Court granted summary judgment to the respondents in its entirety. Pet. App. 3a – 12a. Anderson did agree with the granting of summary judgment against one of his claims, but not to its entirety. Anderson did acknowledge and agreed in his opposition papers to summary judgment that the plaintiff does not have a claim for defamation. However, Anderson clearly demonstrate with sufficient evidence that material issues of fact are in dispute and existed in his case to prevent the granting of summary judgment in its entirety. Those questions were raised in the Appellate Division, First Department, and went unanswered.

On appealed, Anderson continued to claim both the intentional infliction of emotional distress and sexual harassment hostile environment claim. The Appellate Division, First Department affirmed the lower court's decision. Pet. App. 1a – 2a.

Anderson motion for leave to appeal to the Court of Appeals Of The State Of New York (highest court in New York) was denied. The federal question sought to be review was raised in Anderson's opposition to summary judgment papers (contained in the record, p. 202, paragraph 3 and p. 203 last two paragraphs), and in Anderson's appeal papers to the Appellate Division, First Department (contained in Anderson's brief, pages 2-3 under questions presented).

REASONS FOR GRANTING THE PETITION

This case presents an exceptionally important question of federal law that has not been but should be settled by this Court, and which a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Title VII of the Civil Rights Act of 1964 (42 USCS 2000E-2(a)(1) states that workplace sexual harassment is actionable as discrimination because of sex, "where the harasser and the harassed employee are of the same sex..." This Court has recognized, reversed, and remanded same-sex sexual harassment case(s). *See Oncale v. Sundower Offshore Services, Incorporated, et al.* 83 F.3d 118 (1998)

The Appellate Division, First Department concluded that the displaying of the nude photos of Anderson does not show conduct sufficiently outrageous to support a claim of intentional infliction of emotional distress. Pet. App. 1a – 2a. The Appellate Division, First Department also concluded that the supervisor's disclosing of the pictures were certainly offensive, there is no evidence, indeed no claim, that such display was motivated by an animus against men such as might support a claim of sexual harassment (see

Brennan v Metropolitan Opera Assn., 284 AD2d 66, 74 [2001]). Pet. App. 2a

In *Brennan v Metropolitan Opera Assn.*, plaintiff Brennan had claimed both age and sex discrimination, on two separate occasions, in both federal and state court. Brennan claims was first filed in federal court, and then she subsequently filed her claims is state court. In federal court the citation is 192 F.3d 310 [1999], and in state court the citation is 284 AD2d 66, 74 [2001]. In the Supreme Court Of New York, Appellate Division, First Department, the judges all concur in the lower court's dismissal of *pro se* plaintiff Brennan's case in its entirety. However, in the United States Court Of Appeals For The Second Circuit (the court preceding state court decision), though all the judges did agree on the District Court's dismissal of Brennan's claim of age discrimination, they did not all agree on the dismissal of Brennan's claim of sex discrimination.

Brennan's case involves her being subjected to viewing partially and full nude photos of men, at her place of employment. Although, Brennan's case was ultimately dismissed in federal court, the Honorable Jon O. Newman concurred on the dismissal of plaintiff's claim of age discrimination, but dissented on the dismissal of plaintiff's claim of gender discrimination in violation of Title VII. Judge Newman stated that, though he agreed with the majority's rejection of Brennan's age discrimination claim, he respectfully dissent from "the majority's refusal to permit a jury to decide the prolonged display on an office bulletin board of photos of nude and partially clothed men constitutes a hostile work environment entitling a female employee to claim gender discrimination in violation of Title VII. In my view, this is precisely the sort of issue on which the sense of the community, as expressed by a jury, should

be brought to bear."

In this instance, although Desportes disclosing of the photos were not prolong over an extended period of time, the disclosing of the nude photos of Anderson to Anderson's co-workers were certainly "severe enough" as to establish a single episode for hostile work environment. *See Richardson v. New York State Department of Correctional Service*, 180 F.3d 426, 437 (2d Circuit) Desportes intentionally disclosed the nude photographs of Anderson to three of Anderson's male co-workers, which was practically Desportes entire all male security staff at Deutsche Bank. Desportes gave deposition testimony that, upon his disclosure of the photographs to male members of his staff, afterwards is when Desportes contacted his immediate superior Mr. Jack Farrell and informed him of Shimella Abodeen's allegations, and sent Mr. Farrell the photographs. Mr. Farrell subsequently, overlooked Desportes conduct with the pictures, and personally terminated Mr. Edgar Maldonado employment upon Mr. Farrell learning that Maldonado was the sole person responsible for informing Anderson of the entire situation with the photographs. All these facts are proven and contained in the record.

I THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAVE ACKNOWLEDGED SAME- SEX HARASSMENT CASES

The Appellate Division, First Department conclusion that there "is no evidence and Anderson made no claim, that such display was motivated by an animus against men such as might support a claim of sexual harassment", Pet. App. 2a, was a drastic and incorrect conclusion. The question as to whether or not Desportes was motivated by an animus against men shall not be the sole factor for this

court to determine as to whether or not Anderson claim of sexual harassment hostile environment is actionable. The United States Courts Of Appeal for the Seventh Circuit have shared a difference of opinion in regards to same sex sexual harassment hostile environment and the harasser's *motivation*, which is discussed below.

The United States Court of Appeals For The Seventh Circuit (and the Supreme Court Of The United States discussed above) have recognized and suggested that workplace harassment that is sexual in content is always actionable, regardless of the harasser's sex, sexual orientation, or motivation. *See Doe v. Belleville*, 119 F.3d 563 (CA7 1997) The Court in Doe concluded to say that H. Doe is entitled to a trial on his claim of Title VII and Fourteenth Amendment claims of sexual harassment. The Court stated that, "....If H. were a woman, no court would have any difficulty construing such abusive conduct as sexual harassment...." The same can absolutely be said in Anderson's case. If the nude photographs disclosed by Desportes were of a woman employee, and disclosed to her male coworkers, no court would have any difficulty finding Desportes conduct as sexual harassment.

In *Blozis v. Mike Raisor Ford, Inc.*, 896 F. Supp. 805, 1995 U.S. Dist. LEXIS 13165, the decision was written in light of the EEOC standards for sexual harassment and stated that, the inquiry is not "whether or not the victim is of opposite sex from the harasser. That means that a man can state a claim under Title VII for sexual harassment by another man only if he is being harassed because he is a man. There may or may not be homosexual aspects to such harassment. There may or may not be hatred of one's own gender." The same can be absolutely said in Anderson's case, Desportes disclosure of the photographs may not have

been motivated because Desportes hate all men. However, at the same time, suffering sexual harassment from a supervisor of the same sex does nothing to diminish the severity of that harassment or lessen other factors. *See Carrero v. New York City Housing Auth.*, 890 F. 569, 577-78 (2d Cir. 1989)

Anderson's case was decided on summary judgment, which is appropriate only "if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) and the New York Civil Practice Law and Rules § 3212(b). Anderson presented the Appellate Division, First Department with credible deposition and affidavit testimony from all three male co-workers who viewed the photographs. Anderson provided hard evidence of his emotional and psychological injuries he sustained, following the disclosure of the pictures, including letters from each physician explaining Anderson's medical condition in full detail. Anderson submitted to the court, exact duplicates of the nude photographs disclosed by Desportes, to assure that the court has a precise account of what has taken place. All of these facts and hard evidence should have been sufficient to prevent the granting of summary judgment in its entirety. All of these facts and hard evidence are contained in the record, located in the Appellate Division, First Department.

In the respondents amended answer they denied that Desportes disclosed any nude pictures of Anderson to Anderson's co-workers. During pretrial discovery, Anderson produced hard and sufficient evidence disputing the respondents denial of Desportes disclosure of the nude photographs of Anderson to Anderson's co-workers, showing

that Desportes did indeed disclosed nude photographs of Anderson to his male co-workers. The Appellate Division, First Department did not acknowledged that, and the Supreme Court mistakenly stated that the defendant did disclosed the pictures when in the respondents amended answer they denied that very material and essential fact. Pet. App. 5a. Anderson also raised in the Appellate Division, First Department, another genuine issue of material fact in dispute to have prevented the granting of summary judgment in its entirety. Anderson raised the disputed material fact regarding Desportes reasoning for his disclosure of the nude pictures of Anderson to male members of his security staff. Desportes gave deposition testimony that each witness was shown the pictures because they were enlisted in his investigation; however, the witnesses gave deposition and testimony contradicting Desportes testimony. Witnesses stated they did not know why Desportes had shown them the pictures of Anderson and was not informed that they were enlisted in any investigation on Anderson. All of these facts are contained in the record.

Marked as an exhibit by the respondents from Anderson's deposition (and contained in the record), is Anderson's resignation letter. Anderson sent a copy of his letter to his department of human resources and all of Desportes superiors (all men). These are the same superiors who had received a copy of Anderson's original complaint that was also sent to his department of human resources upon Anderson learning of Desportes possession of the nude photographs of him, and his conduct with the photographs. In Anderson's resignation letter he clearly stated that, "I strongly feel that if I was a woman, and the nude pictures were shared with others, as well as the sexual comment was made, the outcome would have surely been different, but because I am a man, Allied Security has sent me a direct

message saying, "Accept what has happened and move on....."

II THE APPELLATE DIVISION, FIRST DEPARTMENT MISCONSTRUED THE FACTS IN THIS CASE

The Appellate Division, First Department misconstrued the facts in this case by dismissing Anderson's appeal and citing *Brennan v Metropolitan Opera Assn.*,(discussed above). In closely reviewing the facts in Brennan, it appears that the majority of reasons for the Appellate Division, First Department affirming the lower court decision to dismiss Brennan's case are the opposite reasons in Anderson's case. In Anderson's case, the facts are about same-sex sexual harassment hostile environment; Brennan's case is not, Brennan is a female and her boss is a male. In Anderson's case the nude photographs in question are of him, in Brennan's case the nude photographs she viewed at work were not of her. In Anderson's case, his immediate supervisor was the one sole person responsible for intentionally disclosing the nude pictures to members of his staff, unlike in Brennan's case the nude pictures were place on a bulletin board, and there was no disclosure of the nude pictures to anyone, although openly displayed.

Unlike in Brennan, Anderson did report Desportes conduct with the photographs to three of Desportes immediate male superiors (by certified mail with return receipt), and to the department of human resources. In addition, two of Desportes male superiors had prior knowledge that Desportes was creating a hostile working environment among members of his staff at Deutsche Bank. A month prior to Desportes disclosing the pictures of Anderson; Edgar Maldonado, Anderson, and two other male security officers

(a total of four Allied security staff members) collectively filed an oral complaint with two of Desportes immediate superiors (two men) addressing on how Desportes "verbally abuses and harasses his staff on a frequent basis." Anderson provided deposition testimony from Edgar Maldonado and himself, confirming Desportes inappropriate workplace behavior and the oral complaint made with Desportes immediate superiors. Desportes also gave deposition testimony that he was informed of the meeting that they had with his superiors and all those in attendance, including Anderson and Edgar Maldonado. All of this evidence is contained in the record that was submitted to the Appellate Division, First Department.

In Anderson's amended complaint, he adamantly stated that the reason why Desportes disclosed the nude pictures of him to members of his staff was an act of retaliation, for Anderson (along with the others) filing the oral complaint against Desportes just a month prior to the disclosure of the nude photographs. The disclosure of the nude photographs had absolutely nothing to do with Desportes investigation on Anderson, which also explains why the witnesses stated in there deposition and affidavit testimonies that they did not understand Desportes disclosure of the nude photographs to them. This also explains why the respondents did not produce any evidence whatsoever consisting of a deposition or affidavit from any of the witnesses confirming Desportes reasoning for his disclosure of the photographs to them. Desportes disclosure of the nude photographs was commenced for the sole purpose to cause Anderson severe emotional and psychological harm and to create an extremely offensive and humiliating working hostile environment. Corporations, employers, and supervisors in every city, state and across this country that, intentionally violates federal and state laws prohibiting sex discrimination, will

never be encourage to change their ways if they are not held accountable for their actions.

CONCLUSION

For the foregoing reasons, Lynis M. Anderson respectfully requests the Court to grant his petition for a writ of certiorari.

Respectfully submitted,

Lynis M. Anderson

Date: January 17th 2007

Supreme Court Of New York, Appellate Division, First Department

Tom, J.P., Saxe, Nardelli, Gonzalez, Catterson, JJ

8558 Index 101042/04

Lynis M. Anderson, Plaintiff-Appellant,

-against-

Shimella "Star" Abodeen, Defendant

Louis Desportes, et al., Defendants-Respondents

Lynis M. Anderson, appellant pro se.

Shafer Glazer, LLP, New York (Howard S. Shafer of counsel), for respondents.

Order, Supreme Court, New York County (Karen S. Smith, J.), entered July 8, 2005, which, insofar as appealed from as limited by the briefs, granted defendants' motion for summary judgment dismissing plaintiff's causes of action for intentional infliction of emotional distress and sexual harassment based on hostile work environment, unanimously affirmed, without costs.

Plaintiff's allegation that the supervisor at his regular job as a security guard maliciously displayed to his coworkers nude photos that he had taken of himself in connection with his sideline as a model does not show conduct

sufficiently outrageous to support a claim for of intentional infliction of emotional distress (see Howell v New York Post Co., 81 NY2d 115, 122 [1993]). While the supervisor's display of the photos allegedly for no reason other than to ridicule and harass was certainly offensive, there is no evidence, indeed no claim, that such display was motivated by an animus against men such as might support a claim of sexual harassment (Brennan v Metropolitan Opera Assn.; 284 AD2d 66, 74 [2001]).

THIS CONSTITUES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 18, 2006

Catherine O'Hagau Wolfe
CLERK

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK: IAS PART 44

Index no.: 101042/2004
Motin seq.: 006
Motion date: May 2, 2005

DECISION AND ORDER

LYNIS ANDERSON, Plaintiff,

-against-

SHIMELLA "STAR" ABODEEN, LOUIS DESPORTES, and ALLIED SECURITY Defendants.

PRESENT: KAREN S. SMITH, J.S.C.:

Defendants Louis Desportes and Spectaguard Acquisitions, LLC i/s/h as Allied Security's motion, pursuant to CPLR §§ 3211 and 3212, for an order either dismissing plaintiff's causes of action or granting summary judgment to defendant is granted as to all three of plaintiff's causes of action.

In this action, plaintiff Lynis Anderson seeks damages for intentional infliction of emotional distress, defamation of character, and injuries caused by sexual harassment and a hostile environment. Defendant Desportes and Spectaguard Acquisitions, LLC i/s/h as Allied Security (Allied) answered the complaint on August 19, 2004. It is not clear to the court whether defendant Shimella "Star' Abodeen has joined the action. Defendants Desportes and Allied now

move to dismiss, or alternatively seek summary judgment on, all the causes of action on the grounds that the complaint either fails to state a cause of action as a matter of law, or that no factual issue exists.

Except as otherwise noted, the relevant facts are not in dispute. During the relevant period of time, plaintiff was employed by defendant Allied as a security supervisor and was assigned to work at Deutsche Bank, located at 280 Park Avenue, new York, New York. Sometime during April of 2003, plaintiff met defendant Abodeen over the internet. They spoke numerous times on the telephone for a period of approximately two weeks. Apparently at defendant Abodeen's prompting, plaintiff sent defendant Abodeen two photographs of himself, one semi-nude and one completely nude. Plaintiff used the semi-nude photograph as a sample for modeling auditions and initially submitted it to Playgirl for publication. Playgirl rejected that photograph and requested a fully nude one. The fully nude photograph was taken by plaintiff's girlfriend in anticipation of submission to Playgirl Magazine. After taking the picture, plaintiff moral misgivings concerning its publication and elected not to submit it.

Shortly after plaintiff sent defendant Abodeen the photographs, plaintiff cut off communication with her as a result of threatening communications plaintiff received from someone claiming to be defendant Abodeen's boyfriend.

Sometime thereafter, defendant Abodeen contacted Deutsche Bank and alleged that plaintiff had placed harassing telephone calls to her from Deutsche Bank and had sent her photographs over Deutsche Bank's computer system.

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Defendant Abodeen provided copies of the photographs that plaintiff sent her to Deutsche Bank to substantiate her claim. Defendant Desportes, plaintiff's supervisor, received the photographs on May 1, 2003. Defendant Desportes immediately commenced an investigation of the defendant Abodeen's claims. During the course of his investigation, defendant Desportes showed the pictures to four male employees of defendant Allied. On October 12, 2003, plaintiff learned he had been investigated by his supervisor, defendant Desportes, concerning the claims by Abodeen. He also learned that defendants Desportes had shown the pictures to the four Allied employees.

On October 13, plaintiff filed a complaint with the defendant Allied's Human Resources Department. On October 27, plaintiff filed a complaint with the New York City Commission on Human Rights. However, the paperwork on his complaint was apparently lost and, when he was informed as such by the Commission, he chose not to pursue his complaint.

On November 7, 2003, Tracie Vincent, an employer of defendant Allied in the Human Resources Department sent plaintiff a letter, outlining her investigation of plaintiff's complaint. She concluded that defendant Desportes acted in good faith in conducting his investigation of defendant Abodeen's claims, that defendant Desportes showed the pictures two other employees of defendant Allied for purposes of the investigation only. Ms. Vincent concluded that defendants Desportes acted without malicious intent. She proposed reassigning plaintiff to a different location if plaintiff felt uncomfortable remaining at the Deutsche Bank

site. On November 10, 2003, plaintiff resigned his position with defendant Allied.

On January 22, 2004, plaintiff commenced this action by filing a summons and complaint with county clerk. On February 23, 2004, plaintiff amended his complaint. In his amended complaint, plaintiff alleges that defendant Desportes used defendant's Abodeen complaint to "get even" with plaintiff for a complaint plaintiff and other employees had filed concerning defendant Desportes's conduct as a supervisor. Plaintiff stated causes of action for intentional infliction of emotional distress, defamation of character, and "hostile-environment sexual harassment".

Defendants Desportes and Allied now move to dismiss all causes of action, or alternatively for summary judgment in their favor. Defendants raise a variety of arguments in their favor. Defendants contend that plaintiff has failed to state a cause of action for defamation, as he has failed to plead defamation with the requisite specificity. Defendants contend that plaintiff's claim for intentional infliction of emotional distress is dupiicative of his claim for defamation, and that the conduct plaintiff alleges, does not rise to the standard necessary to support a claim for intentional infliction of emotional distress. Defendants also contend that the conduct alleged by the plaintiff falls short of the necessary level to maintain a claim for sexual harassment-hostile environment workplace. Defendants contend that plaintiff action is barred by the election of remedies, to the extent that plaintiff initially pursued a claim with the New York City Commission on Human Rights. Defendants contend that any communication between defendant Desportes and other Allied employees is privileged, that plaintiff claims

are barred by workers' compensation, and that defendant Allied had a readily accessible and effective procedure for resolving sexual harassment claims.

Plaintiff responds by contending that defendants' conduct was so outrageous as to satisfy the standard necessary for intentional of emotional distress. Plaintiff contends that defendants' conduct was so severe and pervasive as to cause plaintiff to resign and seek psychiatric treatment. Plaintiff contends that he has not elected an alternative remedy, as he has not pursued his claim with the New York City Commission on Human Rights. Plaintiff contends that defendant Desportes communications with other Allied employees were not privileged in that the other employees had no legitimate interest in viewing nude and semi-nude pictures of plaintiff. Plaintiff contends that his claims are not barred by Workers' Compensation Law, as they concern the intentional acts of an employer. Finally, plaintiff contends that defendant Allied did not have an effective procedure in place for resolving sexual harassment claims in that defendant failed to effectively deal with plaintiff's sexual harassment claim against defendant Desportes.

The proponent of motion for summary judgment under CPLR § 3212 must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence in an admissible form to demonstrate the absence of any material issues of fact (*Guiffrida v. Citibank* 100 NY2d 72, 81 [2003}). Once the movant has made such a showing the burden shifts to the party opposing the motion to produce evidence in admissible form sufficient to establish the existence of any material issues of fact requiring a trial of the action. (*Id.*)

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The court will consider each cause of action in turn and determine whether defendant are entitled to an order dismissing that cause of action or, in the alternative, to an order granting summary judgment in their favor.

Turning first to the defamation claim, defendant has shown, and plaintiff concedes, that plaintiff has not stated a cause of action for defamation. CPLR § 3016(a) states that, in pleading a claim of libel or slander, the specific words alleged must be set forth in the complaint. Plaintiff concedes that he has failed to set forth any specific words to establish defamation in his pleading. Accordingly, defendants are entitled to summary judgment on this cause of action as a matter of law.

Turning next to plaintiff's claim of intentional infliction of emotional distress, defendant has demonstrated that the conduct plaintiff alleges does not, as a matter of law, support a claim for intentional infliction of emotional distress, and plaintiff has failed to raise a material issue of fact on the question. To maintain a cause of action for intentional infliction of emotional distress, plaintiff must plead conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." (*Seltzer v. Bayer*, 272 AD2d 263, 264 [1st Dept. 2000][internal citations omitted]). In *Seltzer*, the Appellate Division, First Department affirmed an order dismissing a claim of intentional infliction of emotional distress where the complaint alleged the defendant the defendant dumped cement in front of plaintiff's house, threw eggs and lit cigarettes on plaintiff's property, and threatened to paint a swastika on plaintiff's house. (*Id.*) In its decision, the App-

ellate Division noted that the few cases in which the Appellate Division, First Department affirmed a lower court's finding of intentional infliction of emotional distress only when the plaintiff's supported their claims with detailed pleadings of "a longstanding campaign of deliberate, systematic, and malicious harassment of the plaintiff." (*Id, citing Shannon v. MTA MetroNorth R.R.*, 269 AD2d 216, 218 [1st Dept. 200]; *Warnerv. Drukier*, 266 AD2d 2, 3 [1st Dept. 1999]: *Harvey v. Cramer*, 235 AD2d 315, [1st Dept. 1997].) The appellate Division held that the conduct plaintiff alleged, throwing lit cigarettes and eggs, dumping cement, and, while deplorable, did not rise to the level of outrageousness sufficient to maintain a cause of action.

The same can be said for the conduct alleged here. Plaintiff has cited only one incident, which he admits he did not become aware of until several months after it happened. While defendant Desportes may have been motivated by malice in showing the photographs to other Allied employees, that act alone does not constitute a longstanding campaign of deliberate, systematic and malicious harassment of the plaintiff. Plaintiff does contend that he and other Allied employees had previously complained about Desportes' verbally abusive, but the pleading contain no specifics concerning that behavior, and plaintiff does not allege that that behavior was a contributing factor to his injury. Finally, plaintiff himself showed the pictures in question to a woman he had met over the internet, had never seen in person, and had known for only two weeks. While this is not dispositive of the matter, plaintiff's willingness to share naked pictures of himself with a relative stranger certainly undermines plaintiff's claims that defendant Desportes's conduct was outrageous. Since the conduct allege

by plaintiff does not rise to the requisite standard, defendants are entitled to judgment as a matter of law in their favor on plaintiff's cause of action for intentional infliction of emotional distress.

Turning finally to plaintiff's claim for sexual harassment-hostile environment, defendants Desportes and Allied have made a *prima facie* showing of entitlement to judgment as a matter of law, and plaintiff has failed to raise a material issue of fact. "A hostile work environment exists when, as judged by a reasonable person, it is permeated by discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the circumstances of plaintiff's employment." (*McIntyre v. Manhattan Ford, Lincoln-Mercury*, 175 Misc2d 795, 802 [Sup. Ct., N.Y. County, 1997] [*citing Harris v. Forklift Sys.* 510 US 17, 21 [1993]]). "Generally, isolated remarks or occasional episodes of harassment will not support a finding of a hostile work environment; in order to be actionable, the offensive conduct must be pervasive," (*Father Belle Community Centre v. New York State Division on Human Rights*, 221 AD2d 44, 51 [4th Dept., 1996] appeal denied 89 NY2d 809 [1997]). Here, plaintiff has only alleged a single, isolated incident to support his claim, namely defendant Desportes's showing the pictures to plaintiff's co-workers. Moreover, plaintiff has failed to allege any facts sufficient to establish that his work place became permeated with discriminatory intimidation, ridicule, and insult. In fact, plaintiff has admitted in his deposition that he was not aware of the incident until October 12, 2003, although the incident allegedly occurred in May 2003. He was also admitted that he was not aware that he was the target of any other form of ridicule and that, when he did become aware of the incident,

defendant Allied's Human Resources Department offered to relocate him to a different work site. As such, defendants have made a *prima facie* showing that plaintiff's workplace was not hostile. Plaintiff has failed to establish a material issue of fact on this issue. Plaintiff, in his opposition, makes no claims concerning the his work place environment after the incident. While he does claim that his humiliation triggered feelings of depression and led him to resign, he does not attribute these incidents to any change in his workplace as a result of defendant Desportes's conduct. Since plaintiff has not raised a material issue of fact on his claim for sexual harassment, defendants are entitled to summary judgment on plaintiff's third cause of action.

Since the defendants Desportes and Allied have established that they are entitled to judgment on all the causes of action for the reasons set forth above, the court need not address the remaining arguments raised in their in their moving papers.

Accordingly, it is hereby :

ORDERED that defendants Desportes and Allied's motion is granted in its entirety, and it is further

ORDERED that plaintiff's causes of action for defamation, intentional infliction of emotional distress, and sexual harassment-hostile work place are severed and dismissed as against defendants Desportes and Allied, and it is further

ORDERED that all remaining parties shall appear for a conference in this case on July 19, 2005 at 9:30 a.m.

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This constitutes the decision and order of the court.

Dated: June 30, 2005

New York, New York ENTER: Karen S. Smith, J.S.C.

Filed Jul 08, 2005 COUNTY CLERK'S OFFICE NEW YORK

State of New York, Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the nineteenth day of October 2006

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

1-10 Mo. No. 955

Lynis M. Anderson, Appellant,

v.

Shimella "Star" Abodeen, Defendant,

Louis Desportes et al., Respondents

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Stuart M. Cohen
Clerk of the Court

"Appendix C"